

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:)	Chapter 11
)	
EASTERN LIVESTOCK CO., LLC, et al., ¹)	Case No. 10-93904-BHL-11
)	
Debtors.)	JOINTLY ADMINISTERED

**TRUSTEE'S RESPONSE TO FLORIDA CREDITORS'
RULE 7042 MOTION TO CONSOLIDATE**

James A. Knauer ("Trustee") respectfully submits this response to the Florida Creditors' Rule 7042 Motion to Consolidate (Dkt. 975) ("Motion")¹ and states as follows:

1. The Trustee has no objection to a consolidation pursuant to Fed. Rules Bank. Proc. Rules 7042 and 9014(c). The claims specifically identified in Paragraph 3 of the Motion relate to Florida stockyard auction purchases involving Jim Byrd or Daniel Byrd during October and November 2010. The Trustee agrees that common questions of law and fact exist between those claims and the pleadings already filed in the above-captioned adversary proceeding. Those questions overlap sufficiently to support consolidation of these matters in all respects pursuant to Fed. R. Civ. P. 42(a).

2. Where the Trustee parts company with the movants is with regard to the factual and legal conclusions woven into their Motion. For example, the movants contend that in each of the transactions at issue, Eastern acted merely as a "Clearing Agency" for Oak Lake, as "clearee." Motion at ¶5. The Trustee does not agree with this characterization of the

¹ The Florida Creditors also filed the same motion in the above-captioned adversary proceeding at Dkt. 29.

transactions, as it ignores the purchase and sale documents that specifically list Eastern as the buyer and seller of the cattle and Oak Lake merely as Eastern's agent.

3. Throughout their Motion, the Florida Creditors also imply and assert that the Packers & Stockyards Act ("PSA") imposed trust obligations on Eastern apart from and in addition to Eastern's surety bond. See, e.g., Motion ¶¶ 8-10. The Trustee has argued consistently in summary judgment papers filed in multiple adversary proceedings that although Eastern was required by federal regulations to carry a bond for its activities, neither the PSA nor its related regulations impose a statutory trust on Eastern for funds received in the capacities in which it acted, which, despite contrary implications in the Florida Creditors' Motion (¶10), did not include selling livestock on commission for the accounts of others.²

4. Additionally, the Florida Creditors assert that Eastern's role in the Florida transactions may give rise to "constructive trust" or "equitable subordination" remedies. Motion ¶11. As the Court is aware, there is scant support for such contentions, and the Trustee has already specifically briefed the constructive trust issue in other adversary proceedings.³

5. Counsel for the Florida Creditors was unwilling to remove or restate these assertions and this was among the reasons the Trustee could not join the Motion at the time of filing. Counsel was also unwilling, at least at the time of filing, to tender to the Court a new pleading setting forth the Florida Creditors' claims. Based on a review of the pleadings filed in the above-captioned adversary proceeding, including pleadings filed while it was still pending in

² See, e.g., Brief in Support of Trustee's Motion for Partial Summary Judgment filed in AP No. 11-59093 at Dkt. 249, pp. 5-10; Brief in Support of Motion for Partial Summary Judgment Regarding Statutory and Constructive Trust Affirmative Defenses filed in AP 11-59086 at Dkt. 40, pp. 14-18.

³ See, e.g., Brief in Support of Trustee's Motion for Partial Summary Judgment filed in AP No. 11-59093 at Dkt. 249, pp. 10-12; Brief in Support of Motion for Partial Summary Judgment Regarding Statutory and Constructive Trust Affirmative Defenses filed in AP 11-59086 at Dkt. 40, pp. 6-14

Wisconsin state court, it appears that the only Florida Creditor who has filed any answer or other pleading is Arcadia Stockyards. The Trustee respectfully suggests that an additional pleading from all of these creditors would assist all parties and the Court in determining the full extent of overlapping factual and legal issues, would permit in particular the Trustee and Fifth Third Bank to assert appropriate affirmative defenses and claims, would assist in determining the proper scope of discovery, and would assist in fashioning a proper pre-hearing/pretrial schedule.

WHEREFORE, the Trustee respectfully requests the Court to order consolidation of the Florida Creditors' claims identified in paragraph 3 of the motion, to establish a 20-day deadline within which the Florida Creditors shall amend and/or file their pleadings in this adversary proceeding, and further requests all other just and appropriate relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Shawna M. Eikenberry

Shawna M. Eikenberry (#21615-53)
Kevin M Toner (#11343-49)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204-1782
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
shawna.eikenberry@faegrebd.com
kevin.toner@faegrebd.com

*Counsel for James Knauer, as Chapter 11 Trustee
for Eastern Livestock Co., LLC*

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt
davidabt@mwt.net

Mark A. Robinson
mrobinson@vhlaw.com

Randall D. LaTour
rdlatour@vorys.com

Daniel J. Donnellon
ddonnellon@ficlaw.com

John W. Ames
james@bgdlegal.com

Jeremy S Rogers
Jeremy.Rogers@dinslaw.com

Meredith R. Thomas
mthomas@daleeke.com

Charles R. Wharton
Charles.R.Wharton@usdoj.gov

David L. LeBas
dlebas@namanhowell.com

Jessica E. Yates
jyates@swlaw.com

Laura Day Delcotto
ldelcotto@dlgfir.com

Ross A. Plourde
ross.plourde@mcafeetaft.com

Todd J. Johnston
tjohnston@mcjllp.com

Karen L. Lobring
lobring@msn.com

Elliott D. Levin
edl@rubin-levin.net

Sean T. White
swhite@hooverhull.com

Michael W. McClain
mike@kentuckytrial.com

James Edwin McGhee
mcghee@derbycitylaw.com

Jerald I. Ancel
jancel@taftlaw.com

David Alan Domina
dad@dominalaw.com

C. R. Bowles, Jr
cbowles@bgdlegal.com

Jeffrey R. Erler
jeffe@bellnunnally.com

John R. Carr, III
jrciii@acs-law.com

Stephen A. Weigand
sweigand@ficlaw.com

Robert Hughes Foree
robertforee@bellsouth.net

Ivana B. Shallcross
ishallcross@bgdlegal.com

William Robert Meyer, II
rmeyer@stites.com

James Bryan Johnston
bjtexas59@hotmail.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com

John Huffaker
john.huffaker@sprouselaw.com

Kelly Greene McConnell
lisahughes@givenspursley.com

Walter Scott Newbern
wsnewbern@msn.com

Timothy T. Pridmore
tpridmore@mcjllp.com

Sandra D. Freeburger
sfreeburger@dsf-atty.com

John M. Rogers
johnr@rubin-levin.net

Robert H. Foree
robertforee@bellsouth.net

William E Smith
wsmith@k-glaw.com

Thomas C Scherer
tscherer@binghamchale.com

Jeffrey J. Graham
jgraham@taftlaw.com

Kent A Britt
kabritt@vorys.com

John Hunt Lovell
john@lovel-law.net

Edward M King
tking@fbtlaw.com

Bret S. Clement
bclement@acs-law.com

John Frederick Massouh
john.massouh@sprouselaw.com

Kim Martin Lewis
kim.lewis@dinslaw.com

Deborah Caruso
dcaruso@daleeke.com

Allen Morris
amorris@stites.com

James T. Young
james@rubin-levin.net

John M. Thompson
john.thompson@crowedunlevy.com

Matthew J. Ochs
matt.ochs@moyewwhite.com

T. Kent Barber
kbarber@dlgfir.com

Kirk Crutcher
kcrutcher@mcs-law.com

Theodore A Konstantinopoulos
ndohbky@jbandr.com

Lisa Koch Bryant
courtmail@fbhlaw.net

John David Hoover
jdhoover@hooverhull.com

Sarah Stites Fanzini
sfanzini@hopperblackwell.com

Susan K. Roberts
skr@stuartlaw.com

David A. Laird
david.laird@moyewwhite.com

Trevor L. Earl
tearl@rwsvlaw.com

Joshua N. Stine
jnstine@vorys.com

Jill Zengler Julian
Jill.Julian@usdoj.gov

Michael Wayne Oyler
moyler@rwsvlaw.com

James E. Rossow
jim@rubin-levin.net

Steven A. Brehm
sbrehm@bgdlegal.com

James M. Carr
james.carr@faegrebd.com

Shawna M. Eikenberry
shawna.eikenberry@faegrebd.com

James A. Knauer
jak@kgrlaw.com

Christie A. Moore
cmoore@bgdlegal.com

Jeffrey E. Ramsey
jramsey@hopperblackwell.com

Joseph H. Rogers
jrogers@millerdollarhide.com

Andrew D. Stosberg
astosberg@lloydmc.com

Andrea L. Wasson
andreawassonatty@gmail.com

Jeffrey L. Hunter
jeff.hunter@usdoj.gov

Jason W. Cottrell
jwc@stuartlaw.com

James B. Lind
jblind@vorys.com

Anthony G. Raluy
traluy@fbhlaw.net

Jack S. Dawson
jdawson@millerdollarhide.com

Terry E. Hall
terry.hall@faegrebd.com

Erick P. Knoblock
eknoblock@daleeke.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com

Eric C. Redman
ksmith@redmanludwig.com

James E. Smith
jsmith@smithakins.com

Kevin M. Toner
kevin.toner@faegrebd.com

Christopher M. Trapp
ctrapp@rubin-levin.net

Amelia Martin Adams
aadams@dlgfir.com

Robert A. Bell
rabell@vorys.com

Melissa S. Giberson
msgiberson@vorys.com

Christopher E. Baker
cbaker@hklawfirm.com

Dustin R. DeNeal
dustin.deneal@faegrebd.com

Jay Jaffe
jay.jaffe@faegrebd.com

Harmony A. Mappes
harmony.mappes@faegrebd.com

Wendy W. Ponader
wendy.ponader@faegrebd.com

Joe T. Roberts
jratty@windstream.net

Robert K. Stanley
robert.stanley@faegrebd.com

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

I further certify that on February 8, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Ashley S. Rusher
asr@blancolaw.com

Darla J. Gabbitas
darla.gabbitas@moyewhite.com

/s/ Shawna M. Eikenberry